STATE OF MICHIGAN

COURT OF APPEALS

BETTY SMITH, Plaintiff-Appellant,	UNPUBLISHED October 25, 2005
v	No. 255699 Oakland Circuit Court
ROLLADIUM, INC., Defendant-Appellee.	LC No. 2003-048908-NO

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting summary disposition to defendant in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff slipped and fell on snow and ice in defendant's parking lot as she was attempting to walk around the back of her car to the driver's side. Plaintiff argues that the circuit court erred in granting defendant summary disposition[1] on the basis that the snow and ice were open and obvious.

This Court reviews de novo the circuit court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When reviewing a motion for summary disposition, we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

[1] Defendant's motion was filed under MCR 2.116(C)(8) and (10). Because the court relied on matters outside the pleadings in ruling on the motion, we will construe the motion as having been granted pursuant to MCR 2.116(C)(10). *Driver v Hanley*, 226 Mich App 558, 562; 575 NW2d 31 (1997).

As a general rule, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, this duty does not generally extend to removal of open and obvious dangers. *Id*.

Whether a particular danger, including snow and ice, is open and obvious depends on whether it is reasonable to expect an average user of ordinary intelligence to discover the danger upon casual inspection. See *Kenny v Kaatz Funeral Home*, 264 Mich App 99; 689 NW2d 737 (2004), reversed for reasons stated by dissenting Court of Appeals judge, 472 Mich 929; 697 NW2d 526 (2005). "[I]f special aspects of a condition make even an open an obvious risk unreasonably dangerous," the owner of the premises has a duty to take reasonable precautions to protect invitees from it. *Lugo, supra* at 517-518. Only those special aspects that create "a uniquely high likelihood or severity of harm if the risk or hazard is not avoided will serve to remove the condition from the open and obvious doctrine." *Id*. at 519.

Plaintiff asserts that there was no evidence that the ice was observable upon casual inspection, as she did not discover the ice until she was on it. However, the test is not whether this plaintiff discovered the danger on her casual inspection, but whether an average individual of ordinary intelligence would have discovered the danger on casual inspection. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329 n 10; 683 NW2d 573 (2004). In this case, such casual inspection could occur anytime after plaintiff entered the parking lot, including when she opened her car door and emerged from the vehicle.

Plaintiff testified that she saw the ice on the ground when she opened the passenger-side car door and she proceeded to walk on it anyway. Plaintiff also stated that she was hanging onto the car and hoping that she did not fall as she walked along the side of the car, which indicates an awareness of the danger. We conclude that no genuine issue of fact remained whether the condition plaintiff encountered was open and obvious.

Although plaintiff does not assert a specific special aspects argument, she alludes to the fact that the condition was unavoidable and, therefore, outside the scope of the open and obvious doctrine. Plaintiff has failed to demonstrate any special aspects that would make the open and obvious condition unreasonably dangerous. As the circuit court noted, plaintiff had options other than walking on the snow and ice, including traveling around the front of the car. The condition here is not the type of unavoidable danger identified in *Lugo, supra.* Accordingly, the circuit court properly granted summary disposition to defendant.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder